

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

LEANDRE MARTELL,

Plaintiff,

v.

D. CHANDLER,

Defendant.

Case No. 2:21-cv-01733-JAD-DJA

ORDER

**I. DISCUSSION**

On April 13, 2022, the Court issued a screening order permitting one claim to proceed, dismissing other claims with leave to amend, and dismissing the remaining claims without leave to amend. (ECF No. 8 at 18.) The Court granted Plaintiff 30 days from the date of that order to file a second amended complaint curing the deficiencies of the Fourteenth Amendment procedural due process claim, the Fourteenth Amendment excessive force claim, the Fourteenth Amendment conditions of confinement claim, the Fourteenth Amendment inadequate medical care claim, and the municipal liability claims. (*Id.*) The Court specifically stated that if Plaintiff chose not to file a second amended complaint, the action would proceed only on the First Amendment retaliation claim. (*Id.* at 19.) Plaintiff has filed a motion to proceed without a second amended complaint, indicating that he “agree[s] to proceed only on the First Amendment retaliation claim” in the first amended complaint. (ECF No. 9.)

The Court grants Plaintiff’s motion. (*Id.*) Pursuant to the screening order and in light of Plaintiff’s election to stand on his first amended complaint, this action will proceed against Defendant D. Chandler on the First Amendment retaliation claim.

**II. CONCLUSION**

For the foregoing reasons, it is ordered that, pursuant to the Court’s screening order (ECF No. 8), this action will proceed against Defendant D. Chandler on the First Amendment retaliation claim.

1 It is further ordered that Plaintiff's motion to proceed without a second amended  
2 complaint (ECF No. 9) is granted.


3 The Court requests that Defendant D. Chandler waive service of summons and of  
4 the first amended complaint (ECF No. 6) by executing, or having counsel execute, a  
5 Waiver of Service of Summons. See Fed. R. Civ. P. 4(d). Such Waiver must be filed with  
6 the Court within 30 days of the issuance of this order. If Defendant chooses to return the  
7 Waiver of Service of Summons, his answer or other appropriate response to the first  
8 amended complaint (ECF No. 6) will be due within 60 days of the issuance of this order.  
9 See Fed. R. Civ. P. 12(a)(1)(A)(ii); see *also* 42 U.S.C. § 1997e(g)(2).

10 The Court instructs the Clerk's Office to mail the following documents to Defendant  
11 D. Chandler:

12 (a) the first amended complaint (ECF No. 6); and

13 (b) this order which includes the Notice of Lawsuit and Request to Waive Service  
14 of Summons; and the Waiver of Service of Summons form.

15 DATED this 4<sup>th</sup> day of April 2022.

16   
17 \_\_\_\_\_  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

LEANDRE MARTELL,  
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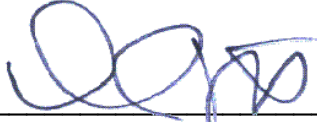
**RULE 4 NOTICE OF A LAWSUIT AND  
REQUEST TO WAIVE SERVICE OF  
SUMMONS**

TO: Defendant D. Chandler  
c/o Las Vegas Metropolitan Police Department  
400 S. Martin Luther King Blvd., Bldg. B  
Las Vegas, NV 89106

A lawsuit has been filed against you or individuals/entities which you represent in this Court under the number shown above. A copy of the first amended complaint (ECF No. 6) is attached. This is not a summons or an official notice from the Court. It is a request that—to avoid the cost of service by the United States Marshals Service—Defendant waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, Defendant must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

If you file the signed waiver, the action will then proceed as if Defendant were served on the date the waiver is filed, but no summons will be served, and Defendant will have 60 days from the date this notice is sent to answer the first amended complaint. If Defendant does not return the signed waiver within the time indicated, the Court will order the United States Marshals Service to personally serve the summons and the first amended complaint on Defendant and may impose the full costs of such service. Please read the statement below about the duty to avoid unnecessary expenses.

Dated: May 4, 2022

  
United States Magistrate Judge

**Duty to Avoid Unnecessary Expenses of Serving a Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and the first amended complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the Court has no jurisdiction over this matter or over a defendant or a defendant’s property.

If the waiver is signed and filed, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must—within the time specified on the waiver form—serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the Court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
6

7 LEANDRE MARTELL,  
8 Plaintiff,  
9 v.  
10 D. CHANDLER,  
11 Defendant.

Case No. 2:21-cv-01733-JAD-DJA

**RULE 4 WAIVER OF SERVICE OF  
SUMMONS**

12 TO: The United States District Court for the District of Nevada  
13

14 The following Defendant acknowledges receipt of your request to waive service of  
15 summons in this case. Defendant also received a copy of the first amended complaint  
16 (ECF No. 6.) I am authorized by the following Defendant to agree to save the cost of  
17 service of a summons and an additional copy of the first amended complaint in this action  
18 by not requiring that the following be served with judicial process in the case provided by  
19 Rule 4 of the Federal Rules of Civil Procedure:  
20

21 \_\_\_\_\_;  
22

23 The above-named Defendant understands that he will keep all defenses or  
24 objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but waive  
25 any objections to the absence of a summons or of service. Defendant also understands  
26 that he must file and serve an answer or a motion under Rule 12 within 60 days from the

27 ///

28 ///

1 date when the Request for Waiver of Service of Summons was filed and that default  
2 judgment will be entered against him if he fails to do so.

3 Date: \_\_\_\_\_

4 \_\_\_\_\_  
5 (Signature of the attorney  
6 or unrepresented party)

7 \_\_\_\_\_  
8 (Printed name)

9 \_\_\_\_\_  
10 (Address)

11 \_\_\_\_\_  
12 (E-mail address)

13 \_\_\_\_\_  
14 (Telephone number)